

Ordinance No. 122968

Council Bill No. 116494

AN ORDINANCE relating to family and medical leave for City employees; amending SMC 4.26.005, SMC 4.26.010, SMC 4.26.020, SMC 4.26.030, and SMC 4.26.040 to incorporate two new categories of federally mandated family and medical leave into and consistent with the City's Family and Medical Leave Program.

CF No. _____

Date Introduced:	<u>4-6-09</u>	
Date 1st Referred:	To: (committee)	Culture, Civil Rights, Health and Personnel (CCRHP)
<u>4-6-09</u>		
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote:	
<u>4-27-09</u>	<u>8-0</u>	
Date Presented to Mayor:	Date Approved:	
<u>4-28-09</u>	<u>5-6-09</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input type="checkbox"/>
<u>5-6-09</u>	<u>10</u>	F.T. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

[Signature]
Councilmember

Committee Action:

pass 4-0 NY, JG, BH, TR

4/27/09 PASS 8-0 (SC ex unid)

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP

City Clerk

Electronic

Indexed



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

March 24, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

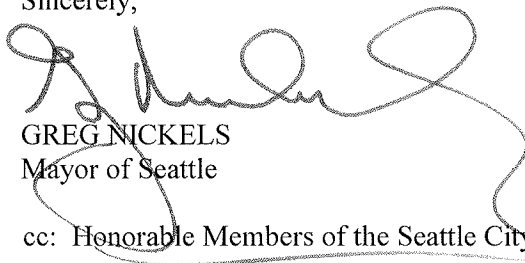
Dear Council President Conlin:

I am pleased to transmit to you a proposed Council Bill incorporating military caretaker leave and military exigency leave in the City's Family and Medical Leave Program (FMLA).

Prior to 2008, the FMLA required employers to provide employees with a minimum of twelve weeks of protected leave for the care of the employee's/spouse's newborn baby, the placement of an adopted or foster child with the employee/spouse, the care of an eligible family member with a serious medical condition, or for an employee's own serious medical condition. On January 8, 2008, former President Bush signed into law changes to the Family and Medical Leave Act of 1993, creating two new categories of protected leave. The first new leave category, military caretaker leave, requires employers to provide eligible employees with a minimum of twenty-six weeks of unpaid leave per year to care for a military servicemember injured while on active duty. The second new category of leave, military exigency leave, requires employers to provide employees with at least twelve weeks of protected leave to address qualified exigencies arising from the fact that the employee's spouse, son, daughter, or parent is a member of the National Guard or Reserves and has been called to active duty. The City's existing Family and Medical Leave Program currently provides a broader benefit than what is federally mandated, including extending family and medical leave benefits to domestic partners. This legislation would incorporate the two new leave categories and administer them consistent with the City's existing Family and Medical Leave Program.

Thank you for your consideration of this legislation. Should you have questions, please contact David Bracilano at ext 47874 or Sarah Butler at extension 47929.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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ORDINANCE 122968

AN ORDINANCE relating to family and medical leave for City employees; amending SMC 4.26.005, SMC 4.26.010, SMC 4.26.020, SMC 4.26.030, and SMC 4.26.040 to incorporate two new categories of federally mandated family and medical leave into and consistent with the City's Family and Medical Leave Program.

WHEREAS, United States President George W. Bush signed into law changes to the Family and Medical Leave Act of 1993 on January 28, 2008, extending family and medical leave to cover exigencies arising from family members being called to active duty, known as "military exigency leave," and expanding the amount of unpaid leave available to family members caring for injured military servicemembers, known as "military caretaker leave;" and

WHEREAS, the City of Seattle seeks to administer these two new leave categories consistent with the existing family medical leave categories provided to employees, which includes extending the new family and medical leave benefits to domestic partners; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Municipal Code Section 4.26.005 is hereby amended as follows:

SMC 4.26.005 Definitions.

Unless another meaning is clearly indicated from the context, as used in this chapter:

A. "Active duty" means duty under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)

~~((A))~~ B. "City" means The City of Seattle.

C. "Contingency operation" has the same meaning given such term in 10 U.S.C § 101 (a) (13).



1 D. "Covered servicemember" means a member of the Armed Forces, including a member of the
2 National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is
3 otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious
4 injury or illness incurred in the line of duty while on active duty in the Armed Forces that may
5 render the member medically unfit to perform the duties of the member's office, grade, rank, or
6 rating.
7

8 ~~((B-))~~ E. "Days" means calendar days.
9

10 ~~((C-))~~ F. "Domestic partner" means an individual designated by a City officer or employee in an
11 affidavit filed pursuant to Seattle Municipal Code Section 4.30.020 and qualified under Section
12 4.30.010.
13

14 ~~((D-))~~ G. "Eligible employee" means an individual who has completed six (6) months of City
15 employment.
16

17 ~~((E-))~~ H. "Group health plan" means health insurance coverage for medical and dental care
18 provided as an incident of employment and on existing terms and conditions as provided to
19 employees similarly situated.
20

21 ~~((F-))~~ L. "Health care provider" means any provider included within Seattle Municipal Code
22 Section 4.24.005 D.
23
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1 ~~((G.))~~J. "Medical leave" means leave requested to recuperate, recover or treat a serious health
2 condition for the son, daughter, spouse/domestic partner, parent, covered servicemember, or
3 employee.

4
5 K. "Military Exigency" means a necessity arising out of a member of the National Guard or
6 Reserves being on active duty status, or receiving notification of an impending call or order to
7 active duty status, in the support of a contingency operation. Qualifying military exigencies must
8 meet the requirements of 29 CFR § 825.126 and include:

9
10 1. Short notice deployment

11
12 2. Military events and related activities

13
14 3. Childcare and school activities

15
16 4. Financial and legal arrangements

17
18 5. Counseling

19
20 6. Rest and recuperation

21
22 7. Post-deployment activities

23 8. Additional activities that qualify as an exigency as agreed to by the City and the
24 employee

25 L. "Next of Kin," used with respect to an individual, means the nearest blood relative of that
26 individual.



1 M. "Outpatient status," with respect to a covered servicemember, shall mean the status of a
2 member of the Armed Forces assigned to one of the following:

3 1. A military medical treatment facility as an outpatient; or
4

5 2. A unit established for the purpose of providing command and control of members of
6 the Armed Forces receiving medical care as outpatients.

7 ~~((H.))~~ N. "Parent" means the parent of an employee or the parent of an employee's
8 spouse/domestic partner, or an individual who stood in loco parentis to an employee or the
9 employee's spouse/domestic partner when the employee or the employee's spouse/domestic
10 partner was a son or daughter.
11

12 ~~((I.))~~ O. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours
13 per workweek, or hours per workday, of an employee.
14

15 ~~((J.))~~ P. "Serious health condition" means an illness, injury, impairment, or physical or mental
16 condition that involves:
17

18 1. Inpatient care in a hospital, hospice, or residential, medical care facility; or
19

20 2. Continuing treatment by a health care provider.
21

22 ~~((K.))~~ Q. "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward,
23 or a child of a person standing in loco parentis, who is:
24

25 1. Under eighteen (18) years of age; or
26



2. Eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

~~((L.))~~R. "Spouse" means a husband or wife.

Section 2. Seattle Municipal Code Section 4.26.010 is hereby amended as follows:

SMC 4.26.010 Leave provisions.

A. Eligible employees are entitled to up to ninety (90) calendar days of unpaid leave in addition to any paid leave to which they may otherwise be entitled during any twelve (12) month period for one or more of the following:

~~((A.))~~1. The birth of a son or daughter of the employee and in order to care for such son or daughter.

~~((B.))~~2. The placement of a son or daughter with the employee for adoption or foster care.

~~((C.))~~3. The ~~((F.))~~ care ~~((for the))~~ of a spouse/domestic partner, or a son or daughter, or parent, of the employee or spouse/domestic partner, if such spouse/domestic partner, son, daughter, or parent has a serious health condition.

~~((D.))~~4. A serious health condition that makes the employee unable to perform the functions of the position of such employee.

5. A qualifying military exigency for the spouse /domestic partner, son, daughter or parent of the employee.



Expiration of entitlement. The entitlement to leave under subsections A (1) and ~~((B))~~ A (2) above for birth or placement of a son or daughter shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement.

B. Eligible employees are entitled to up to twenty-six (26) workweeks of unpaid leave during any twelve (12) month period for the care of a covered service member who is the spouse/domestic partner, parent, son, daughter, or next of kin of the employee.

C. Eligible employees may take both types of family medical leave described in subsections A and B above during the same twelve (12) month period, provided that the combined leave taken in that twelve (12) month period does not exceed a total of twenty-six (26) workweeks.

Section 3. Seattle Municipal Code Section 4.26.020 is hereby amended as follows:

SMC 4.26.020 Notice.

A. In any case in which the necessity for leave under subsection A (1) or ~~((B))~~ A (2) of Section 4.26.010 is foreseeable based on an expected birth or placement, the employee shall provide the City with at least thirty (30) days' notice, before the date of leave is to begin, of the employee's intention to take leave, except that if the date of birth or placement requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable.

B. In any case in which the necessity for leave under subsection ~~((C))~~ A (3), ~~((or D))~~ A (4) or B of Section 4.26.010 is foreseeable based on planned medical treatment, the employee shall:

1. Make a reasonable effort to schedule the treatment so as not to disrupt unduly the



1 operations of the City, subject to the approval of the health care provider of the employee or the
2 health care provider of the son, daughter, spouse/domestic partner, covered servicemember, or
3 parent, as appropriate; and
4

5 2. Provide the City with not less than thirty (30) days' notice, before the date the leave
6 is to begin, of the employee's intention to take leave under such subsection, except that if the
7 date of the treatment requires leave to begin in less than thirty (30) days, the employee shall
8 provide such notice as is practicable.
9

10 C. Failure to provide notice as prescribed in this Section shall be grounds to deny leave.

11 Section 4. Seattle Municipal Code Section 4.26.030 is hereby amended as follows:
12

13 **SMC 4.26.030 Leave taken intermittently or on a reduced leave schedule.**

14 A. Leave under subsection A (1) or ~~((B))~~ A (2) of Section 4.26.010 shall not be taken by an
15 employee intermittently or on a reduced schedule unless the employee and City agree otherwise.
16

17 Leave under subsection ~~((C))~~ A (3), ~~((or D))~~ A (4) or B of Section 4.26.010 may be taken
18 intermittently or on a reduced leave schedule when medically necessary. Medical necessity shall
19 be determined and certified by a health care provider as provided in subsection F or G or Section
20 4.26.040. Leave under subsection A (5) of Section 4.26.010 may be taken intermittently or on a
21 reduced leave basis regardless of whether or not there exists a medical necessity.
22

23 B. If an employee requests intermittent leave, or leave on a reduced leave schedule, under
24 subsection ~~((C or D))~~ A (3), A (4) or B of Section 4.26.010, that is foreseeable based on planned
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1 medical treatment, the City may require such employee to transfer temporarily to an available
2 alternative position offered by the City for which the employee is qualified and that:

3 1. Has equivalent base pay and benefits; and
4

5 2. Better accommodates recurring periods of leave than the regular employment
6 position of the employee.
7

8 Section 5. Seattle Municipal Code Section 4.26.040 is hereby amended as follows:

9 **SMC 4.26.040 Medical certification requirement.**

10 Medical certification is required for medical leave under subsection ~~((C or D))~~ A (3), A (4) or B
11 of Section 4.26.010. The medical certification must be issued by the health care provider of the
12 eligible employee or of the son, daughter, spouse/domestic partner, covered servicemember, or
13 parent, as appropriate, of the employee. Certification should include:
14

15 A. The date on which the serious health condition commenced;
16

17 B. The probable duration of the condition;
18

19 C. The appropriate medical facts within the knowledge of the health care provider regarding the
20 condition;
21

22 D. A statement that the eligible employee is needed to care for the son, daughter, spouse/
23 domestic partner, covered servicemember, or parent, or a statement that the employee is unable
24 to perform the functions of the position of the employee;
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26



1 E. In the case of certification for intermittent leave, or leave on a reduced leave schedule, for
2 planned medical treatment, the dates on which such treatment is expected to be given and the
3 duration of such treatment;

4
5 F. In the case of certification for intermittent leave, or leave on a reduced leave schedule, under
6 Section 4.26.010 ((D)) subsection A (4), a statement of the medical necessity for the intermittent
7 leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or
8 reduced leave schedule; and
9

10 G. In the case of certification for intermittent leave, or leave on a reduced leave schedule, under
11 Section 4.26.010 ((E)) subsection A (3) or B, a statement that the employee's intermittent leave
12 on a reduced leave schedule is necessary for the care of the son, daughter, parent, covered
13 servicemember or spouse/domestic partner who has a serious health condition, or will assist in
14 their recovery, and the expected duration and schedule of the intermittent leave or reduced leave
15 schedule.
16

17
18 The City may require, at the expense of the City, that the eligible employee obtain the opinion of
19 a second health care provider designated or approved by the City concerning any information
20 certified as provided above.
21

22 When the second opinion differs from the opinion in the original certification, the City may
23 require, at the expense of the City, that the employee obtain the opinion of a third care provider
24 designated or approved jointly by the City and the employee.
25
26



1 The opinion of the third health care provider concerning the information certified above shall be
2 considered to be final and shall be binding on the City and the employee.

3 The City may require that the eligible employee obtain subsequent recertifications on a
4 reasonable basis.
5

6 Section 6. Any acts made consistent with the authority of and prior to the effective date of
7 this ordinance are hereby ratified and confirmed.

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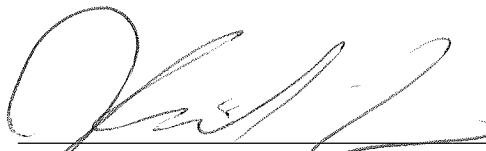
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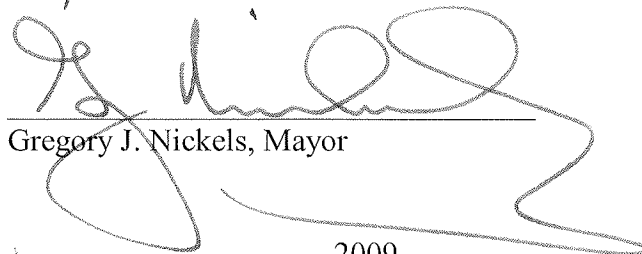


Section 7. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 27th day of April, 2009, and signed by me in open session in authentication of its passage this 27th day of April, 2009.


President _____ of the City Council

Approved by me this 6th day of May, 2009.


Gregory J. Nickels, Mayor

Filed by me this 6th day of May, 2009.


Acting City Clerk

(Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Personnel	David Bracilano/47874 Sarah Butler/47929	Amy Williams/32651

Legislation Title:

AN ORDINANCE relating to family and medical leave for City employees; amending SMC 4.26.005, SMC 4.26.010, SMC 4.26.020, SMC 4.26.030, and SMC 4.26.040 to incorporate two new categories of federally mandated family and medical leave into and consistent with the City's Family and Medical Leave Program.

- **Summary of the Legislation:**

This legislation amends the Seattle Municipal Code to incorporate military caretaker leave and military exigency leave in the City's Family and Medical Leave Program.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

Prior to 2008, the FMLA required employers to provide employees with a minimum of twelve weeks of protected leave for the care of the employee's/spouse's newborn baby, the placement of an adopted or foster child with the employee/spouse, the care of an eligible family member with a serious medical condition or for an employee's own serious medical condition. On January 8, 2008, President Bush signed into law changes to the FMLA, creating two new categories of protected leave. The first new leave category, military caretaker leave, went into effect upon signature and required employers to provide eligible employees with a minimum of twenty-six weeks of unpaid leave per year to care for a military servicemember injured while on active duty. The second new category of leave, military exigency leave, did not go into effect until January 16, 2009. Employers must provide employees with at least twelve weeks of protected leave to for qualified exigencies arising from the fact that the employee's spouse, son, daughter, or parent is a member of the National Guard or Reserves and has been called to active duty. Under the new law, employees may take a combination of the new categories of protected leave; however, employers are not required to provide employees with more than twenty-six weeks of combined leave per twelve month period, if that leave includes military caretaker leave.

The City's existing Family and Medical Leave Program currently provides a broader benefit than what is federally mandated, including extending family and medical leave benefits to domestic partners. This legislation would incorporate the two new leave categories and administer them consistent with the City's existing Family and Medical Leave program.

- *Please check one of the following:*

 X **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*



Fiscal impacts of the additional City benefit to FMLA are estimated to be minimal to none. There is currently no data on how many City employees have family in the military and would meet the criteria to be eligible for military family leave. However, because the leave is unpaid, there would not be a cost to the City except for situations in which the employer must backfill to meet minimum staffing requirements. Also, the additional City benefit provided by this legislation is relatively small, and would not pose a substantial increase to costs resulting from federal FMLA requirements.

Administration of the leave will be absorbed by existing human resources staff who administer the City's current Family and Medical Leave Program.

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

If this legislation is not implemented, departments will have to administer two different FMLA programs, and may need to expend additional resources to set up payroll systems to track and monitor the administration of each program.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

None.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

None.

Please list attachments to the fiscal note below:

None.